

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION  
FINAL UTILITY ORDERS  
Selected for Publication  
March 2002

March 1, 2002

In re the Matter of the  
Petition of

ELECTRIC LIGHTWAVE,  
INC., FOX  
COMMUNICATIONS,  
INC., INTERNATIONAL  
TELCOM LTC, AND XO  
WASHINGTON, INC.

For Declaratory Order on  
Reciprocal compensation  
Rates

DOCKET NO. UT-013073

ORDER CLARIFYING DECLARATORY  
ORDER

Permanent rates established in Commission orders must be submitted in tariff filings and approved by the Commission before becoming effective. ¶ 6

Since the Commission did not establish permanent per-MOU reciprocal compensation rates in its prior order, and since local exchange carriers did not file tariffs including such rates in their compliance filings pursuant to the prior order, those local exchange carriers may not now establish such rates merely by making a compliance filing. ¶¶ 8-9

The failure to file reciprocal compensation rates in tariffs now precludes an ILEC from making a tariff compliance filing to establish permanent per-MOU reciprocal compensation rates. ¶ 8

March 1, 2002

In the Matter of the  
Development of Universal  
Terms and conditions for  
Interconnection and  
Network Elements to be  
Provided by

VERIZON NORTHWEST,  
INC.

DOCKET NO. UT-011219

FIRST SUPPLEMENTAL ORDER

The Commission exercises its authority under state statutes and the federal Telecommunications Act of 1996 to require Verizon NW to establish generally applicable terms and conditions for interconnection and network elements.

Service offerings to the public of regulated services by telecommunications companies must be made by tariff. ¶ 19; RCW 80.36.100 et seq.

The conduct of a proceeding to establish universal terms and conditions is consistent with the principles of Section 252(g) of the Act allowing a state commission to consolidate certain proceedings in order to reduce administrative burdens on telecommunications carriers and the state commissions. ¶ 19

The Commission must consider the limited resources of CLECs to negotiate and arbitrate interconnection agreements on a case-by-case basis, as well as the Commission's own limited resources to deal with multiple agreements, in determining how best to further competition in the telecommunications industry in accord with the public interest. ¶20; *NAACP v. FPC*, 425 U.S. 662, 669(1976)

The public interest is served when customers of all ILECs in Washington State obtain the same competitive terms and conditions, and when Washington State customers receive the same competitive benefits as customers of the same ILECs in other States receive. ¶ 21; §§ 252 and 271 of the Act

The informal workshop process is consistent with the basic elements of due process as defined in Washington State's Administrative Procedures Act. ¶ 22

The Statement of Generally Available Terms and Conditions (SGAT) adopted for one provider does not necessarily adequately reflect the network and operations of another provider and thus does not constitute an appropriate foundation to establish tariffs containing interconnection and network element terms and conditions for that provider. ¶ 24

March 4, 2002

DOCKET NOS. UE-011514 AND 011595

In Re the Matter of

FOURTH SUPPLEMENTAL ORDER  
APPROVING AND ADOPTING SETTLEMENT  
AGREEMENT

AVISTA CORPORATION,  
d/b/a AVISTA UTILITIES

For an Order Finding  
Avista's Deferred Power  
Costs Were Prudently  
Incurred and Are  
Recoverable

.....  
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WASHINGTON UTILITIES  
AND TRANSPORTATION  
COMMISSION,

Complainant,

v.

AVISTA CORPORATION,  
d/b/a AVISTA UTILITIES

Respondent.

The Commission approves and adopts the settlement stipulation resolving the prudence of certain deferred power costs and Avista's request for interim rate relief. The Commission allows \$196,023,342 in deferred power costs to be recovered in rates; removes the condition that collection of a 25% surcharge to recover deferred power costs is subject to refund; allows one-fifth of the 25% surcharge revenues to be applied to offset general operating costs until the conclusion of the pending general rate case; provides for a 6.2% rate increase over base rates; and requires Avista to exclude from certain of its power cost deferral amounts capital costs and other costs of the generation projects known as Boulder Park, Kettle Falls CT and Coyote II.

In setting these rates, the Commission takes into consideration the conditions of extreme drought and wholesale power market volatility during 2000-2001 that created unprecedented financial needs for Washington utilities. ¶ 25

In determining whether to grant interim relief that is not "subject to refund", the Commission considers that higher interest rates may be caused by the negative reaction of lenders to substantial uncertainty posed by power cost deferral balances and interim relief that is not "subject to refund". ¶¶ 28, 37, 69

March 12, 2002

In the Matter of the  
Investigation Into

DOCKET NOS. UT-003022 AND UT-003040

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U S WEST  
COMMUNICATIONS,  
INC.'S

TWENTY-EIGHTH SUPPLEMENTAL ORDER  
ADDRESSING WORKSHOP FOUR ISSUES

Compliance with Section  
271 of the  
Telecommunications Act of  
1996

The Commission reviews the Initial Order relating to Checklist Item No. 4 (Loops), Emerging Services, General Terms and Conditions, Public Interest, section 272 requirements, and Track A requirements. The Commission reverses the Initial Order with respect to decisions affecting loops, line splitting, line sharing, subloop unbundling, SGAT general terms and conditions, and section 272. It otherwise affirms the Initial Order.

In the Matter of

U S WEST  
COMMUNICATIONS,  
INC.'S

Statement of Generally  
Available Terms Pursuant  
to Section 252(f) of the  
Telecommunications Act of  
1996

Qwest must modify its SGAT to provide a reference to its retail building policies, and provide a method for CLECs to gain access to that information so that the Commission and parties can determine if Qwest's treatment of CLEC's requests to build is at parity with the treatment of Qwest's retail customers. ¶ 21

Qwest must provide facilities to CLECs in areas already served by like facilities that are being used to full capacity if that is the way it would treat its own retail customer requesting such facilities. Qwest need not provide such facilities for "free". ¶ 22

During the pendency of an investigation into possible Qwest violations of the U.S. WEST/Qwest Merger Settlement Agreement, Qwest may not charge CLECs for removing load coil encumbrances of any type, or bridged

taps not requiring construction or excavation, in the 47 central offices that are the subject of Qwest's commitment in the merger settlement.

¶ 26

Until an order is issued in the cost and pricing docket, UT-003013, Qwest may charge CLECs for loop conditioning in the central offices other than the 47 central offices subject to Qwest's commitment in the merger settlement. ¶ 27

Qwest must modify its SGAT to include a procedure that allows CLECs access to loop qualification information that is not accessible electronically but that exists anywhere within the ILECs back office. ¶ 34

Qwest must modify the SGAT to allow CLECs to audit the loop qualification tools provided to them, in order to determine that the tools provide the same information, in the same time frame, to CLECs as Qwest's internal data tools provide its retail operations, and that Qwest provides all information required by the FCC.

¶ 35

Qwest must file a memorandum in this docket that specifies which of the FCC's requirements from its Line Sharing Order Qwest has met for deploying remote DSL in Washington. ¶ 43

Qwest must replace interfering T1 carrier systems within 90 days. The Commission will resolve disputes concerning interference. ¶ 46

The Commission upholds the Initial Order requiring Qwest to convert interoffice facilities (IOF) to loop facilities under certain circumstances when CLECs request fiber and fiber is already in place, but does not require

Qwest to convert IOF that it maintains to ensure adequate reserve facilities. ¶¶ 49-50

Qwest must modify the SGAT to remove the local usage restriction on unbundled dark fiber. ¶ 54

Based on recent FCC decisions, ILECs are not obligated to provide CLECs with access to splitters. ¶ 60; *Joint application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, INC. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order, CC Docket No. 01-194, FCC 01-338, ¶ 106 (rel Nov. 16, 2001); In re Deployment of wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, and Implementation of the Local competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order on Reconsideration, Fourth Report and Order on Reconsideration, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 01-26 (rel. Jan. 19, 2001). (Line Sharing Reconsideration Order).*

The SGAT must include a provision for line sharing on fiber feeder subloops to allow CLECs to transmit data traffic to and from a remote terminal. The SGAT must specify line sharing technologies identified in applicable FCC rules. ¶ 69

CLECs may not order subloops using the NID process. ¶ 74

The SGAT must reflect that if a CLEC removes Qwest facilities from the NID when there are no spare terminals available and Qwest is damaged in the process because of the CLEC's failure to follow standard electrical protection and safety procedures, the CLEC shall be liable to Qwest under the indemnity and limitation of liability provisions of the Agreement. ¶ 80

In order to promote consistency with other states in the Qwest's service territory, CLECs will have to make LSRs for subloop inside wire orders. ¶ 103

The SGAT must reflect a limit or cap on the parties' total amount of liability per contract year, in accord with SGAT language on limitations of liability used in other state model interconnection agreements. ¶115

Indemnification provisions concerning end-user claims must exclude from indemnification losses due to negligence, gross negligence, or intentional misconduct of the employees, contractors, agents or other representatives of the Indemnified Party. ¶121

The Commission will allow the parties to further address the issue of whether Qwest's application for section 271 relief is in the public interest only if they have new information concerning the state of competition in the local market, the effect of Qwest's application on competition in the local and long distance markets, assurance of future compliance, and any unusual circumstances, including the impact of *Sprint v. FCC*. ¶ 133; *Sprint Comm. Co. v FCC, No. 01-1076 (D.C. Cir., Dec. 28, 2001)*



Based on Qwest's supplemental filings, made subsequent to the entry of the Initial Order, the Commission finds Qwest in compliance with section 272 regarding structural separation of the long-distance affiliate. ¶¶ 134, 158

March 13, 2002

In Re Application of U S  
WEST  
COMMUNICATIONS and  
QWEST  
COMMUNICATIONS  
INTERNATIONAL, INC.

For an Order Disclaiming  
Jurisdiction, or in the  
alternative, Approving the  
U.S West, Inc. – Qwest  
Communications  
International, Inc. Merger

DOCKET NO. UT-991358

#### TWELFTH SUPPLEMENTAL ORDER

The Commission denies Qwest Corporation's Petition to modify requirements under one of the eight measurements of performance established in the Commission's Ninth Supplemental Order in this proceeding. The Commission also denies Qwest's request to be relieved of its obligation to pay the full credit due as a result of its failure to meet one of the Service Quality Performance Program measures for 2001.

The Commission enters its final orders at the conclusion of an adjudicatory proceeding under the public interest standard. The Commission has the power to modify prior orders but only if to do so is in the public interest. ¶ 16-17; RCW 80.01.040; RCW 80.04.210

Absent a showing of changed circumstances, significant hardship, or other convincing reasons, the Commission will not grant a request to alter only one of several performance measures because to do so would fail to take into account the utility's overall performance and the dynamic interplay associated with operating to meet all the performance measures. ¶¶ 20-28

March 22, 2002

WASHINGTON UTILITIES  
AND TRANSPORTATION  
COMMISSION,

Complainant,

v.

QWEST CORPORATION,

Respondent.

DOCKET NO. UT-011329

FIFTH SUPPLEMENTAL ORDER  
ADOPTING SETTLEMENT AGREEMENT

The Commission adopts settlement agreements on the basis that the result is consistent with the public interest and that it saves time, effort and expense for the Commission, the company and the intervenors. Acceptance of a settlement is done without a detailed examination and the close study of partisan arguments on contested issues that produces informed decisions on each litigated issue. Therefore an Order approving and adopting a settlement agreement does not constitute a ruling on any underlying issue that might have been litigated. ¶ 10

March 26, 2002

In the Matter of the

Continued Costing and  
Pricing of Unbundled  
Network Elements,  
Transport and Termination

DOCKET NO. UT-003013

THIRTIETH SUPPLEMENTAL ORDER  
ORDER IMPOSING MONETARY PENALTY

The Commission may impose a monetary penalty even where a party's failure to comply with the Commission's procedural requirements does not substantially effect the rights of other parties. In determining to impose a monetary penalty the Commission will consider the burden created for the Commission and its staff in investigating and addressing a nonconforming filing or other failure to comply with Commission procedural requirements. ¶¶ 15-17; *RCW 80.04.380*

March 28, 2002

WASHINGTON UTILITIES  
AND TRANSPORTATION  
COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY,  
INC.,

Respondent  
.....

PUBLIC COUNSEL,

Complainant,

v.

PUGET SOUND ENERGY,  
INC.,

Respondent.

DOCKET NO. UE-011570 AND UG-011571  
(CONSOLIDATED)

NINTH SUPPLEMENTAL ORDER ADOPTING  
SETTLEMENT STIPULATION

DOCKET NO. UE-011411

THIRD SUPPLEMENTAL ORDER ADOPTING  
SETTLEMENT STIPULATION; DISMISSING  
COMPLAINT

The Commission adopts an unopposed Settlement Stipulation in resolution of Puget Sound Energy's request for interim relief. The Commission allows \$25 million in additional revenue to be recovered in rates over an approximate period of three months, commencing April 1, 2002. The approval of the Settlement Stipulation in Docket Nos. UE-011570 and UG-011571 resolves certain issues pending in Docket No. UE-011570, Puget Sound Energy's general rate case and entirely resolves Public Counsel's complaint in Docket No. UE-011411 concerning the historical general rate treatment of the prior Bonneville Power Administration residential exchange credit.

The Commission's authority to authorize interim rate relief is a power necessarily incident to the exercise of the Commission's express statutory authority to regulate the rates of jurisdictional utilities. ¶ 15; State ex rel. *Puget Sound Navigation Company v. Department of Transportation*, 22 Wn. 2d 448, 206 P.2d 456 (1949). RCW 80.28.020.